IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 4892/2007

RASTRIYA AUTO SAELS
Vs.
THE AUTHORITY APPOINTED UNDER THE RAJASTHAN SHOPS AND COMMERCIAL ESTABLISHMENTS ACT, 1958, JAIPUR CITY

DATE: 23.10.2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. R.K. Kala for the petitioner.
Mr. Sumit Khandelwal for the respondents.

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The matter comes up on the application under Article 226(3) of the Constitution of India for seeking vacation of ex parte interim order dated 12.07.2007 granted by this Court. At the request of the parties, the matter is finally heard at this stage.

2. Brief facts of the case are that the respondent No.2 Shri Pawan Agarwal was working as a Sales Representative in petitioner's establishment. On account of indisciplined act of the respondent No.2, the petitioner firm issued two charge-sheets to him on 31.08.2002 and 16.10.2002. In response to the aforesaid charge-sheets, the respondent No.2 submitted reply.

3. The petitioner firm appointed Shri Rajesh Kuamr Sharma as enquiry officer, who conducted enquiry so far as both the charge-sheets are concerned and after giving opportunity of being heard to the respondent No.2 and after completion of the enquiry, the enquiry officer submitted his report holding the respondent No.2 guilty of the charges and the charges levelled against the respondent No.2 in the charge-sheets were found proved and thus, the respondent No.2 was dismissed from service vide letter dated 17.12.2002.

4. Against the said dismissal order dated 17.12.2002, the respondent No.2 filed a complaint under Section 28-A of the Rajasthan Shops and Commercial Establishments Act, 1958 (for short 'the Act of 1958') before the authority appointed under the Rajasthan Shops and Commercial Establishments Act, 1958, Jaipur City, Jaipur. The authority considered the submissions on the complaint as well as the reply submitted by the respondent No.2 and hold that the enquiry conducted by the enquiry officer is not fair vide its order dated 09.08.2004.

5. The petitioner submitted an application before the authority appointed under the Act of 1958 to prove charges against the respondent No.2 and wanted to lead

evidence, but the same was rejected vide order impugned dated 15.05.2007 holding that on account of unfair enquiry, order of dismissal from service is quashed and set-aside and the petitioner was directed to reinstate the respondent No.2 in service with all consequential benefits.

6. This writ petition is directed against the impugned order dated 09.08.2004, by which the authority appointed under the Act of 1958 has held that the enquiry is unfair and against the order dated 15.05.2007, by which the order of dismissal from service has been quashed and set-aside. Both the aforesaid impugned orders are challenged by the petitioner firm on the ground that as per sub-clause (3)of Section 28-A of the Act of 1958, the prescribed authority shall cause a notice to be served on the employer relating to the said complaint, record briefly the evidence produced by the parties, hear them and make such inquiry as it may consider necessary and thereafter pass orders in writing giving reasons therefor.

7. After referring sub-clause (3) of section 28-A of the Act of 1958, learned counsel Mr. Kala, appearing for the petitioner submits that the Prescribed Authority has not provide opportunity to the petitioner

to adduce evidence in support of the charges levelled against the respondent No.2, which is mandatory.

8. In support of his submissions, learned counsel for the petitioner placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **The United Planters Association of Southern India Vs. K.G. Sangameswaran and another, AIR 1997 SC 1300,** wherein the Hon'ble Supreme Court has held that the Appellate authority can take evidence and come to its own conclusion about guilt of delinquent- Such power is not limited to cases where no evidence is recorded at time domestic enquiry.

9. It is also observed that the Appellate authority empowered to take evidence and to come to its own conclusion about guilt of delinquent- Opportunity of hearing given employees at appellate stage would sufficiently meet demand for a just and proper enquiry.

10. It is also stated at bar that the provisions of Section 41(2) of the Tamil Nadu Shops and Establishment Act, 1947 are paramateria to Section 28-A of the Rajasthan Shops and Commercial Establishments Act, 1958.

11. Learned counsel for the petitioner also referred a judgment rendered by this Court in **S.B. Civil Writ Petition No. 2806/1996- Raj. State**

Cooperative Consumer Federation Ltd., Jaipur Vs. Authority under Shops a& Comm. Estt. Act & Ors., dated 13.12.2005, which has been passed after considering the ratio decided by the Hon'ble Supreme Court in the case of **The United Planters Association of Southern India Vs. K.G. Sangameswaran and another (supra)** and the co-ordinate Bench of this Court remanded the matter back to the authority for reconsideration of the matter afresh in accordance with law after granting permissions to either party to lead evidence as against charges imputed to delinquent employee which was made a basis for passing order of his removal from service.

12. Per contra, learned counsel appearing for the respondents has strongly opposed the submissions and also referred the same provisions i.e. provisions of the Section 28-A of the Act of 1958 and in support of his submissions, he placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **National Engineering Industries Ltd. Vs. Shri Krishan Bhageria and others, 1988 LAB I.C. 384 (AIR 1988 SC 329),** more particularly para Nos. 12 and 14, wherein the Hon'ble Supreme Court has held that the Industrial Disputes Act and the Rajasthan Shops and Establishments Act of 1958 tread the same field. Both these Acts deal with the rights of the workman or employee to get

redressal and damages in case of dismissal or discharge, but there is no repugnancy because tehre is no conflict between these two Act, in pith and substance. There is no inconsistency between these two Act. There two Acts are supplemental to each other.

13. He further placed reliance on the judgment of the Division Bench of this Court rendered in the case of **Indian Tourism Development Corporation Ltd. Vs. The Authority Appointed under the Raj. Shops & Commercial Establishments Act, 1958 & Anr., RLR 1987(II) 387,** wherein the Hon'ble Supreme Court has held (para Nos. 12 and 17) as under:-

> "In cases where the employer dispenses with the services of an employee on the ground of defined misconduct as provided under Rule 24A, he is not required to give any notice, but he is required to conduct an inquiry in accordance with Sub-Rule (2) of Rule 24A i.e. he is required to conduct an inquiry into the charges by giving a reasonable opportunity to the employee i.e. by following the principles of natural justice and, in case, there is no such inquiry, it would mean no inquiry at all, as 'no inquiry' or 'defective inquiry' stands on the same footing. The consequence of defective inquiry or no inquiry would be that proviso to Sec 28A would not be attracted and the action of the management in dispensing with the services will be null and void."

14. The ratio decided by the Hon'ble Supreme Court in the case of **Karnataka State Road Transport Corpn. Vs. Smt. Lakshmidevamma and another, 2001 LAB I.C. 1777,** is also referred by the learned counsel appearing for the respondents. The Hon'ble Supreme Court has held that right of employer to adduce additional evidence in justification of action taken- Has to be reserved in application made by employer under Section 33 or in objection filed to reference made under Section 10- Right cannot be exercised at any time thereafter.

15. Taking advantage of the ratio decided by the Hon'ble Supreme Court, learned counsel for the respondents submits that opportunity to adduce evidence after holding by the competent authority that the enquiry is not conducted fairly, has rightly not been provided to the petitioner.

16. This judgment is also relied upon by the learned counsel for the petitioner, more particularly he referred para No. 45, which is reproduced as under:-

> “45. It is consistently held and accepted that strict rules of evidence are not applicable to the proceedings before Labour Court/ Tribunal but essentially the rules of natural justice are to be observed in such proceedings. Labour Courts/ Tribunals have power to call for any evidence at any stage of the proceedings if the facts and circumstances of the

> case demand the same to meet the ends of justice in a given situation. We reiterate that in order to avoid unnecessary delay and multiplicity of proceedings, the management has to seek leave of the Court/ Tribunal in the written statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contentions. But this should not be understood as placing fetters on the powers of the Court/ Tribunal requiring or directing parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded if on facts and circumstances of the case it is deemed just and necessary in the interest of justice."

17. Learned counsel for the petitioner also referred the judgment of the Hon'ble Supreme Court rendered in the case of **Divyash Pandit Vs. Management, NCCBM, (2005) 2 SCC 684,** wherein it has been held by the Hon'ble Supreme Court that even though management may not have made any prayer for leading additional evidence in its written statement, but, following *Laxmidevamma case,* (2001) 5 SCC 433, further held, this does not place a fetter on powers of Court/Tribunal to require or permit parties to lead additional evidence, including production of documents at any stage of proceedings before they are concluded- Once Labour Court came to finding that domestic enquiry was non est, facts of case warranted that it should have given

one opportunity to management to establish the charges before passing an award in favour of the workman.

18. I have heard rival submissions of the respective parties and have also carefully gone through the impugned orders challenged in this writ petition as well as the judgments referred by the respective parties.

19. As per the settled preposition of law as laid down by the Hon'ble Supreme Court in the case of **Divyash Pandit Vs. Management, NCCBM (supra),** even the management has not made any proper application for seeking permission to adduce additional evidence, Hon'ble the Supreme Court has held that in the interest of justice one opportunity before passing an award should be provided to the management to establish the charges levelled against the workman.

20. Here in the instant case, the petitioner firm has moved proper application which has been rejected by the authority appointed under the Act of 1958. It has been held by the Hon'ble Supreme Court that before passing an award, evidence can be adduced in the interest of justice if it is found necessary. Even considering the case of **Karnataka State Road Transport Corpn. Vs. Smt. Lakshmidevamma and another (supra),** wherein the Hon'ble Supreme Court has held that it

should not be understood as placing fetters on the powers of the Court/Tribunal requiring or directing parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded if on facts and circumstances of the case it is deemed just and necessary in the interest of justice.

21. As this judgment is relied upon by both the parties, having considered the ratio decided by the Hon'ble Supreme Court, I find it a fit case to remand the matter back to the respondent No.1 Authority for reconsideration of the matter afresh in accordance with law after granting permission to either party to lead evidence as against the charges imputed to delinquent employee which was made a basis for passing order of his removal from service.

22. Consequently, the orders impugned dated 09.08.2004 and 15.05.2007 are herewith quashed and set-aside and the writ petition stands disposed of in the terms as indicted herein above.

23. The application under Article 226(3) of the Constitution of India also stands disposed of.

(K.S. RATHORE),J.

/KKC/